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SUPPLEMENT

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CSHB 148 DEBATE - SECOND READING

REPRESENTATIVE BURKETT: **HB 148** is the result of a collaboration with several interested parties to address the issue of mail ballot fraud in Texas, and it seeks to maintain integrity in our voting system by addressing the flaws of our current mail ballot system. This issue is of particular concern in small-turnout elections, such as local elections and primaries. I introduced a bill similar to this last session. Over the interim and during this session, I have met with stakeholders to craft a bill to address the issue of election integrity and at the same time attempted to preserve the ability to assist the elderly and disabled in voting.

HB 148 addresses election integrity by making it a Class A misdemeanor to collect and deposit carrier envelopes for more than 10 voters in an election. It also makes it punishable by fine, jail confinement, or both, to pay an individual to collect more than 10 mail ballots. When this bill was first introduced, there was concern about prosecuting individuals who were acting as good samaritans and through the collaboration process we addressed these issues by creating exceptions for employees of state licensed care facilities or state certified facilities not subject to state licensure where the voter resides if that employee is acting in the normal course of the employee's authorized duties, and an exception for certain family members. The bill also requires notification on the envelope as prescribed by the secretary of state to include limitation of mailing the 10 ballots during an election cycle.

While there are those that deposit ballots in an effort to legitimately assist others, and we don't want to stop that, it is clear that the practice of voter harvesting occurs in this state—especially in the local elections and small voter-turnout elections. It is impossible to tell how often the fraud occurs because voting with mail-in ballots occurs in the privacy of one's home. Once a ballot is received at that house, that house becomes a voting booth, and we must put safeguards into place to protect the integrity of the voting process. However, any amount of fraudulent or illegal activity is unacceptable in a system where one vote can determine the outcome of an election. Members, if there aren't any questions, then I move passage.

REPRESENTATIVE DALE: Are you familiar with the May 2003 election in Hearne, Texas?

BURKETT: No, I am not, Representative Dale.

DALE: Did you know that in that election about 74 percent of the ballots that were cast were not just early voting, but there were a large amount of absentee ballots?

BURKETT: That happens in our elections, especially the locals.

DALE: And did you know that in the election, they had a 45 percent turnout, but on the same day in Bryan, there was an 8 percent turnout, and in College Station, there was a just a 4.3 percent turnout? Did you know that?

BURKETT: Wow. That's quite a disparity.

DALE: I don't know if you're aware, but did you know that a grand jury indicted at least one individual that voted 34 times in that election?

BURKETT: I was unaware of this particular incident, but we have seen this happening throughout the state, yes, sir.

DALE: Were you aware that the Bryan-College Station *Eagle* newspaper actually went door-to-door and asked people that voted absentee, "Did you vote in this election?" They found dozens and dozens of individuals that were listed as disabled that were actually doing yardwork and such in their yards and said that they had not voted in the election.

BURKETT: I was not aware of that in this particular instance, but unfortunately when we have fraudulent voting like that it dilutes everybody's vote in the election.

DALE: Did you know that in the city of Houston on that same day in May 2003, they had hundreds of more people voting in the tiny town of Hearne that said they were disabled, voting by mail, than they had in the entire city of Houston?

BURKETT: Those numbers definitely don't work, I agree with you.

REPRESENTATIVE VILLARREAL: I just wanted to recognize that you spent a lot of time on this bill.

BURKETT: I really did. I tried to make this a collaborative effort to attend to everybody's concerns.

VILLARREAL: I received your letter and I want to recognize how much effort you've put into bringing the various stakeholders to the table and trying to balance your legislative proposal. Can you walk us through how the bill has changed?

BURKETT: Certainly, I'd be happy to. In our original bill, we had taken the offense of Class B misdemeanor and raised it to a state jail felony, and that was for the actual harvesting, the person who was performing that. There was some concern that that seemed a little harsh. My concern of course, and I think everybody has seen the articles that have been distributed on the floor, is that obviously there are many actors that are unconcerned with the current penalty that's included. You've been here much longer than me, but I think most of the folks here on the floor realize that when we put into effect laws, if there's not an

appropriate penalty, it's not going to dissuade illegal activity. So to address that concern we moved it back down to a Class A misdemeanor from the state jail felony.

With our original bill we started out with two carriers, two mail-in ballots carried per person, per election; that would be primary and run off, or general and run off, special and run off. There was some concern with the democrat party that asked us to increase it to 20; we compromised to 10. I think that's a good number to hit the good samaritan who just wants to help, who would not be aware. Then we did have one group mention to us, "You know, y'all are after these poor actors that are just trying to be the good samaritan; you should go after the people who are paying them." So we have put an offense in there to address the people who are knowingly, deliberately trying to fraudulently get votes. So that's a new statute that's in there. Okay, then of course the secretary of state wants to make sure that it's appropriately marked on the envelopes, for the people handling the envelopes to know that there is a limitation. I think that about covers it. Oh, we did put some things in there to address concerns about people who are disabled. If you're living in a nursing facility certified in the state—we don't want the little guy who is walking around with the mail cart just collecting these senior citizens' ballots to be committing a crime. So there is an exception in there for them. Our chairman of the Elections Committee was also concerned about our military, so we put in an exception for military and spouses. And I think that about covers everything.

VILLARREAL: How was it voted out of committee?

BURKETT: We didn't have a totally unanimous vote, obviously, or I wouldn't be here on the floor, but we did have a bipartisan vote that came out.

REPRESENTATIVE C. TURNER: What problem are we trying to solve with this bill today, **HB 148**?

BURKETT: Well, what we were really trying to get at—I had some articles delivered on the floor. We have instances—and it's particularly prominent in South Texas, but it's also been occurring up in the North Texas area where I live—where you have people who are hired to go to disabled or elderly people who have requested a mail-in ballot, gather those ballots, and mail them in for them. Unfortunately, what happens sometimes in those cases is they are coaching them on how to mark the ballots. There have been instances where the ballots simply weren't mailed in if it was suspected they weren't voting for the candidate of their choice. So we simply want to make sure that votes are counted, counted accurately, and these folks that are getting our mail-ins from the disabled and the elderly, that they are not being disenfranchised.

C. TURNER: Right. And I think we would all agree that if that kind of thing is going on—if someone is coercing someone or intimidating someone into voting a certain way, obviously we're against that, and we have pretty tough laws on the books already to address that. You mentioned that—and I began to read the material you passed out on the floor—this is on the first page, about three quarters of the way down: "The greatest incidence of fraudulent mail-in ballots

seems to occur in South Texas where there is a large population of elderly Hispanics who do not speak, read, or write English." Is this a South Texas problem that we're trying to solve?

BURKETT: It is not, as I mentioned, this is not just a South Texas problem, this is a statewide problem. We've had some issues down in Houston, we've had some issues and some convictions up in North Texas, in the Dallas County area.

C. TURNER: So, we both represent the same parts of the state; we're both from North Texas. What areas of North Texas have you identified as having this problem?

BURKETT: Dallas County, in particular. We had one case that we had to take out to Rockwall to get it prosecuted.

C. TURNER: Right. But that was successfully prosecuted under the current law, was it not?

BURKETT: It was.

C. TURNER: So, this bill would not really have affected that case, since the current statute already enabled someone to bring an indictment and successfully prosecute those who violated the law. Is that correct?

BURKETT: In that particular case, no. As far as I know, it would not. The fact of the matter remains that we do have an issue with voter fraud. Last session, many of us were here when we discussed voter ID, and I heard many times from the back mic, "Why are we doing voter ID when the problem—the fraud—is in mailed ballots?" And I agree. I think voter ID was a necessary item as well, but I totally agree there is a fraud issue in our mailed ballots. We heard that from Representative Anchia, now from Congressman Castro, from Representative Strama. I think these are issues that we need to work on together which is one reason I reached out to members, trying to come up with something—nobody, I think, is totally happy with this, but I think it's a start. It's a step in the right direction.

C. TURNER: And again, we're all opposed to voter fraud, and clearly, with those cases that have been prosecuted, it's great that justice was done. My only point is that I think we have some very tough laws on the books already as it pertains to mail-in ballots and how the conduct of elections are governed. And it clearly has not held prosecutors back on the ability to bring an indictment and successfully prosecute people who are doing wrong, so I just wanted to get a little bit at your intent and better understand what we're trying to accomplish here.

BURKETT: My intent is to have fair elections, make sure that nobody is disenfranchised, and nobody who has voted properly gets their vote diluted.

REPRESENTATIVE CANALES: Representative, is your intent to catch good samaritans for helping somebody vote by mail?

BURKETT: No, that is not my intent. My intent is to guarantee the integrity of our elections.

CANALES: So, if for instance there's a boy scout that takes a mail ballot for his disabled neighbor, that's not your intent?

BURKETT: Oh, absolutely not.

CANALES: Okay. I noticed—and it was left on my desk, there is an article written here, with no evidence or proof or anything, that says, "Rampant Voter Fraud in South Texas." I happen to be from South Texas. Your intent is to get people that are getting paid for this? For harvesting ballots, is that—

BURKETT: My intent is to stop any voter fraud that may be occurring.

CANALES: But your bill talks about catching people that are paid for allegedly harvesting votes. Is that what the intent is, to stop payment?

BURKETT: No, the intent is to stop any illegal activity.

CANALES: Okay. And I noticed that there were three witnesses that were for this but a whole host of witnesses who were against it. I guess you may or may not agree with me, but the majority of people who live in South Texas are Hispanic. And it seems to be that MALC and the American Civil Liberties Union, those are the people that testified against your bill. Do you know why they testified against your bill?

BURKETT: I do not know why except for the issues that we've already addressed. This is a bill to guarantee that we have correct and legitimate elections throughout the state.

CANALES: In your bill, Representative, you have a defense for prosecution, is that correct?

BURKETT: Yes, sir, that's correct.

CANALES: And in that defense, if someone provided assistance during their normal duties as a caretaker—

BURKETT: That gives them a defense, that's correct.

CANALES: So other than that, nobody else can help somebody? A good samaritan?

BURKETT: No, a good samaritan can absolutely help somebody.

CANALES: And you'd be willing to accept an amendment that says that?

BURKETT: I'd have to see your amendment, so—

CANALES: Thank you.

[Amendment No. 1 by Wu was laid before the house.]

REPRESENTATIVE WU: One of the things we need to be careful about when we create criminal penalties is to make sure that we only catch the fish that we're actually trying to catch. That we don't inadvertently net other people, okay? The affirmative defense, laid out in Representative Burkett's bill, only provides an exception for a specific individual—an individual designated as "a person who provides assistance in their normal duties as the caretaker." That limits it to basically very few individuals who can possibly help without being in trouble,

okay? You could even have a nurse who is helping, but because the patient—they have an order signed that the actual, legal caretaker is a relative. That nurse would fall out of this exception.

Representative Burkett gave you a handout. The handout talks about what the problem is. The handout talks about the fact that it is people being paid to harvest votes that is the problem. The problem is not people who are doing this out of the goodness of their hearts. The problem is not people who are voluntarily helping their senior neighbors. The problem is not a boy scout who is trying to earn their merit badge to help seniors vote or help their neighbors vote. These are the people we don't want to catch. We should not be catching good samaritans in a law that most of us in here don't even fully understand. What my exception does—what my amendment does is to make the exception apply to anyone who is doing it voluntarily, they were requested by the voter to help them, and they are not doing it for any compensation at all. So, this would make the exception open for any volunteer who is doing it out of the goodness of their heart—

REPRESENTATIVE SIMMONS: I did not grow up at the esteemed university that Mr. Wu did, but I can count to two and we've been well more than two seconds, will the gentleman yield? Mr. Wu, do you serve on the Elections Committee?

WU: I do.

SIMMONS: I serve on that with you, don't I?

WU: You do, as well.

SIMMONS: And we had this bill early in our committee process, correct?

WU: We did.

SIMMONS: And we had a long debate on this, right?

WU: We did.

SIMMONS: And you had the opportunity to ask question after question, correct?

WU: And I did.

SIMMONS: Just as I did, and Representative Burkett was willing to work with whomever she needed to work with on this bill, in fact, she offered a committee substitute.

WU: That's correct.

SIMMONS: And now you're coming before this body today with a brand new amendment that you haven't talked to Representative Burkett about that you're trying to insinuate that her bill is trying to do something that's nefarious.

WU: That is not—

SIMMONS: Her bill—you would agree that Representative Burkett is not trying to do something improper, wouldn't you agree?

WU: Absolutely not. What I am saying is that every—there are always consequences that are unintended. We have to be careful to look at every scenario to make sure that there are no other unintended consequences. To make sure we don't round up people who are doing things out of the goodness of their hearts, to be good citizens, to be good samaritans, to make sure we don't catch these people as well. The people who are doing that for money, the people who are doing this to defraud the election process? Throw them in jail.

SIMMONS: What about a precinct chair that's doing that to win an election, I mean, they don't get paid, what's the—what do you—shouldn't we—we shouldn't allow that should we?

WU: You know what, if you want to help make that work with this, I'd be happy to look at your—have you read the amendment?

SIMMONS: Nobody's read the amendment.

WU: It's on—

SIMMONS: Well, I'm standing right here, I don't have a screen in front of me, so—but, my question is, Mr. Wu, what I'm concerned with is that it appears that you believe that Ms. Burkett is not trying to help get a better voting, cleaner voting scenario so that we can all be comfortable, more comfortable with our elections.

WU: I absolutely agree with Representative Burkett that there is a problem that needs to be fixed. The question is, when you kill a fly, do you use a flyswatter or do you use a sledgehammer?

SIMMONS: Well, if it's a horsefly, I've got a—

WU: We want to make sure that when we do things, we do them elegantly and to not destroy anything else at the same time.

SIMMONS: So as long as you do it for free, you're good. Is that what you're saying?

WU: We're saying the person that—the person dropping off the ballot in the mailbox was requested by the voter. The voter asked them, "Please, could you take this to the mailbox for me?" And the person who did it, the person who took it to the mailbox, did not receive a single penny for doing that act.

SIMMONS: So your amendment says that you can do whatever you want with the dropping these off, or collecting them, or whatever, as long as you don't get paid. That's what your amendment reads to me. I just saw it, so I could be wrong.

WU: No. The amendment provides—just like the defense in the bill itself, the defense is already in the bill. I didn't write the defense. The defense to prosecution is in the bill itself. What I am saying is the way that the defense is written, it is so narrowly tailored, so ambiguous, that virtually no one will be able to use the defense. What I am asking for in this amendment is to say open the

defense up a little bit more. Open it up to good samaritans. Open it up to the boy scout who's trying to help. Open it up to the good neighbor who's trying to help the elderly couple next door.

SIMMONS: I understand that, Mr. Wu, but do you agree that sometimes good intentions can also have bad results?

WU: Absolutely, and if you want to help me make my amendment better—

SIMMONS: Your good intentions could have bad results as well, do you agree with that?

WU: I agree. If you would like, I will temporarily withdraw it if you want to help me make it better.

SIMMONS: I think Ms. Burkett's bill is good as it is, but I appreciate you answering my questions very much. Will you vote for the bill if you accept her amendment? Mr. Wu, will you vote for the bill if she accepts your amendment?

WU: I will vote for the bill if she accepts the amendment.

REPRESENTATIVE S. TURNER: Representative Wu, let me—on page 4 of the bill, on the affirmative defense. The affirmative defense that's outlined in the bill specifically says what? Because I'm confused by the language.

WU: The affirmative defense says it is an affirmative defense for prosecution for an offense under this section. If a person depositing the carrying envelope containing ballots voted by another person, "if the voter requested assistance from the person" in depositing the envelopes—now, here's the part, the tricky part—"and that assistance was provided in the course of the person's normal duties as caretaker." The first problem with that is—

S. TURNER: The definition.

WU: Is it in the normal course of duties for a nurse to take stuff to the mail?

S. TURNER: This language is ambiguous, okay? Number one, the language is—would you agree with me that the language in the bill is highly ambiguous?

WU: Yes.

S. TURNER: That's number one—

WU: And that is why I'm trying to clarify it.

S. TURNER: Now, that's why this bill is going to face a legal challenge. I will tell you, if it is unclear on the floor of this house as to what this bill does, the bill is going to face a legal challenge.

WU: I agree.

S. TURNER: And it should. What is your understanding when it says "caretaker"? What's the definition of a caretaker?

WU: I don't know. Is it a legally defined caretaker by a legal document? Is it a caretaker in the general sense? Is it a caretaker of—what is it?

S. TURNER: If a person is taking care of a senior or taking care of somebody who is disabled, would that fit within your understanding of what a caretaker is?

WU: It might, but that might not be what the court would say it would be.

S. TURNER: Within the definition of this statute that Representative Burkett is seeking to amend, is there a definition for caretaker?

WU: There is none.

S. TURNER: In the Elections Committee, did you all seek to define what the course of the person's normal duties as caretaker is?

WU: I believe we tried to ask, but we never got a full response.

S. TURNER: So, to the extent we are not able to define what this language is, and to the extent it is unclear on the floor of this house as to what this language is, how do you believe a court will interpret what the legislature meant with this ambiguous language? Because it is ambiguous to me.

WU: And that's exactly the point. In criminal law, when you have a statute that does not carefully define who is actually in the wrong, who commits a crime—

S. TURNER: Mr. Speaker, I would move for the gentleman's time to be extended. Now, people may choose not to, but I think it's very important, if we're going to create a bill that's going to create penalties, Mr. Speaker, that we be able to define what the terms of this bill are, because at this point, Mr. Speaker, the terms of this bill are unclear to me when I am about to vote. And, again, I just want to focus on the definition in case this bill is challenged in court, and since you are a prosecutor, I just need you, Representative Wu, if you can define for me what the terms mean, "course of a person's normal duties as the caretaker"—

WU: I cannot define it.

S. TURNER: Then maybe the author of the bill can define for me what the terms are. Would the author of the bill come forward at some point?

WU: There is no statute in the Election Code to define any of these matters. None. And, again, same point, if the language on a criminal statute is ambiguous, the court will overturn the statute.

S. TURNER: Well, let me just say to you, and I think you may agree or disagree, but at this point, unless somebody provides a definition and a better understanding of what the terms are in this bill, particularly as it relates to this section—the terms are unclear, they are ambiguous, and I believe that anyone who attempts to be charged based on it, I think the bill itself will face legal challenges.

WU: Absolutely. Would you like to speak—

S. TURNER: I'm hopeful, at some point in time, the author will be able to provide some description of what these terms are.

WU: Even if you could carefully define a caretaker and their duties, and in the course of their duties, you still have the problem of people who may not fit in that category. People who are trying to help, trying to do a good thing, trying to do

their duty as a citizen to help their fellow citizens vote, who will get caught up and charged with a criminal offense, and, by the way, the criminal offense in this case carries a 30-day minimum sentence.

S. TURNER: And that is why, Representative Wu, I've signed on on this amendment, because I believe that it's important, if we are going to pass a bill that has penalties and sanctions attached to it, and can impact people's liberties, I think it is very important that we clarify and have a good understanding of what the terms are.

BURKETT: I am going to table this amendment. I appreciate all the conversations that have happened, but we feel like it is covered in the bill as written and there's not going to be any danger for that.

REPRESENTATIVE KOLKHORST: Ms. Burkett, I know we were talking up front and looking at the amendments, and the question arose that, is this already in the bill?

BURKETT: It is already in the bill—contained in the bill. I feel like the way it's written it does address these issues.

KOLKHORST: Okay, so you're willing to take this amendment just as an affirmation of what is already a part of the bill?

BURKETT: Well, no, I was going to table the amendment.

KOLKHORST: You are going to table?

BURKETT: Yes, ma'am, I feel like it's already there.

KOLKHORST: I'm sorry, I see it now, motion to table. So, what you're saying is, Ms. Burkett, is that what Mr. Wu is offering is already in the bill—

BURKETT: Correct.

KOLKHORST: So that's why there's no need to put this in the bill.

BURKETT: Correct.

S. TURNER: And for clarification purposes only—my questions are for clarification, whether the people are going to vote for or vote against it, at this point I could care less, but with respect to page 4, lines 10 through 15 as relates to the affirmative defense, that is all new language, is it not?

BURKETT: Yes, because that's a different—a new penalty or a new offense, but it is duplicated from the language that is prior, yes, sir.

S. TURNER: Well, I understand, but for purposes of this bill, for purposes of my question, the language on page 4, between 10 and 15, that is new language?

BURKETT: Correct.

S. TURNER: And it pertains to an affirmative defense, correct?

BURKETT: Correct.

S. TURNER: And this affirmative defense is not in any other statute. That is correct, is it not?

BURKETT: I do not—I know what I have here for the statute that we're amending—I don't know any other statute.

S. TURNER: But the affirmative defense that you have put—that's in this language, on this page, pertains to this particular bill and what you are attempting to do?

BURKETT: Yes, sir.

S. TURNER: Okay, and a person is entitled to an affirmative defense, according to the language in your bill, if the voter requested assistance from the person and that assistance was provided in the course of the person's normal duties as caretaker of the voter?

BURKETT: Correct.

S. TURNER: Okay. Can you please provide a definition to me of what you mean when you say, "provided in the course of the person's normal duties as caretaker of the voter," because I don't know what that means.

BURKETT: An example would be if you are a person in a nursing home and there is somebody in that nursing home, be it a nurse, or the mail person who may run around doing the mail, and their normal course of duties—obviously the mail person would normally take the mail, but if a nurse is in there and helping out one of her patients and they say, "Would you take this to the mail room?" That's my intent, is to cover that those types of requests are not going to be prosecuted.

S. TURNER: Supposing it's a person at home that lives in their homestead and there's a neighbor that comes and takes care of that person on a regular basis, would that person be defined as a caretaker?

BURKETT: This addressed directly living facilities, but that person, I believe, would be covered under the up-to-10 rule for the good samaritan.

S. TURNER: I'm not understanding—

BURKETT: They're requesting help, and, as a friend, as a neighbor, if they have not met that 10 limit, they are welcome to help them.

S. TURNER: No, no, I'm trying to get a definition. Give me your definition of the course of a person's normal duties as a caretaker. Just give me the definition, not an example. Give me the definition of a caretaker as it is in your bill on page 4, between lines 13 and 15. Just provide me with the definition of what a caretaker is.

BURKETT: This is a defense for caretakers who work in an assisted living facility.

S. TURNER: So, you are strictly limiting "caretaker", by way of your definition, to a—what did you say again? Living facility only?

BURKETT: Just a second.

S. TURNER: Because while you are looking, Representative Burkett, I think you will agree with me that terms have meaning. Terms do have meaning, do they not? I have no problems with this bill being referred back to committee for you all to flush out these terms.

BURKETT: No, sir, we'll get you an answer, just give us a second to look at it in light of your question.

S. TURNER: Right, but I'm just saying, you will agree with me that terms have meaning, especially when it may curtail a person's liberty and freedom?

BURKETT: Yes, I agree that words have meaning, thank you.

S. TURNER: I want to give them as much time to provide definitions to a bill that could take away a person's freedom and liberty.

BURKETT: Mr. Turner, I think your question is answered in the defense that if you are helping—you're the good samaritan helping, it falls under that. This is strictly geared toward the assisted living facilities, nursing facilities, etc.

S. TURNER: So you're saying, with respect to the language on page 4, the affirmative defense between lines 13 and 15, that that language is only intended for persons that are working within licensed living facilities only.

BURKETT: It's not just for licensed, it's for any registered, licensed or not, facility. To ensure that our disabled and our elderly get the help they need and that the folks that are their caretakers that are helping them are not prosecuted for doing that.

S. TURNER: So the affirmative defense in your bill, in **HB 148**, is only intended for persons that are working in a licensed facility?

BURKETT: A person who does not work in a licensed facility is covered by the fact that if the voter asks for help, which they can do by law, they may receive that.

S. TURNER: I'm sorry, Representative Burkett, I just want to make sure I got your definitions correct. Are you saying that the affirmative defense only applies to caretakers—however you envision a caretaker, that's working in a licensed living facility or no?

BURKETT: The bill reads, "an employee of a state licensed care facility or state certified facility not subject to state licensure where the voter resides who is working in the normal course of the employer's authorized duties, it is an affirmative defense for prosecution for an offense under Subsection (f) that the person possess an official ballot or an official carrier envelope provided to a voter other than the person if the voter requested assistance from the person and that assistance was provided in the course of the person's normal duties as a caretaker of the voter."

S. TURNER: Let me ask you this and let me give you an example. Let me give you a very personal example. My mom is at home. My mom has a provider. In fact, my mom has three providers and they are there more than I'm there, okay, so they are there now when I am not there. If one of those providers, which I pay

for, and who is there in their normal course of business there to take care of my mom—if one of those providers assisted my mom in voting, does that provider have an affirmative defense under this bill?

BURKETT: The affirmative defense—you have paid your mom's provider to be her caretaker, and it specifically says in the bill that they are providing their—they're doing their duties as a caretaker to that person, they have an affirmative defense.

S. TURNER: But that is not a licensed facility, that is a homestead. So, again, does your definition include licensed facilities as well as a person's home?

BURKETT: If your mother's provider is not being paid by a campaign person or other outside force, she is caretaking of your mom, I believe that she has a defense.

S. TURNER: Okay, so now the affirmative defense doesn't just apply to a licensed facility, the affirmative defense also goes to—

BURKETT: Representative Turner, your mother's caretaker, I believe, is covered under current law having an individual ask, as is their legal right, for help. And just because she is there being paid by you to care-take her doesn't mean she cannot ask that person for that help.

S. TURNER: But my question, Representative Burkett, goes to your affirmative defense section. Does the affirmative defense section apply to licensed care facilities as well as to people who are living in their home? That's my question. And that's a yes or no.

BURKETT: Just a second.

S. TURNER: Well, Representative Burkett, let me sum it up. Representative Burkett, would you agree with me that, with respect to the affirmative defense, it is ambiguous as to whether or not the affirmative defense in this bill applies to licensed facilities, to people who may be at their homes, to people that may be in hospitals, it is ambiguous, at best, as to what this affirmative defense can—how it can be applied? So, that's the essence, isn't it? It is unclear.

BURKETT: I think it's very clear on what it's intended to cover.

S. TURNER: Does it cover hospitals?

BURKETT: If they're there in a temporary living position—

S. TURNER: Does it cover homes?

BURKETT: We've already discussed the home situation. Somebody that is in your mother's home or anybody else's home, under current law, can assist them when requested.

S. TURNER: Can someone that's a provider in my mother's home apply—let me just ask my question, Ms. Burkett.

BURKETT: I'm sorry, go ahead. Please proceed.

S. TURNER: Can a provider in a person's home, can they utilize the affirmative defense?

BURKETT: This affirmative defense is geared toward providers who are in a position where they have the possibility of more than 10 people asking for their assistance so that they will be covered under this bill. The situation you described to me with your mother in her home is one provider, one home, and she is covered under our current law.

S. TURNER: Okay, if there are more than one person—and let me just say to you in my home there's more than one person—I am asking whether or not this affirmative defense can be utilized by providers in a home?

BURKETT: In a personal home?

S. TURNER: In a personal home.

BURKETT: This is geared toward people who are exposed to having more than one person ask for help in the duties of their job, in a location in a residential home.

S. TURNER: Representative Burkett, I believe the language in your bill is ambiguous and vague and I would ask, would you consider pulling your bill down in order to tighten up the language in **HB 148**?

BURKETT: No, sir, I feel the language is sufficient to cover the—

S. TURNER: That's fair enough.

WU: Members, it is never any medical professional's duty to take care of voting. It is never a medical personnel's duty to take care of voting. That's it. No one can fall into this exception. Everyone will be left out. You are creating a law that will make good samaritans criminals. You know what, just in the time I've been standing here I could think of multiple scenarios where this would happen. If you have a boy scout who says, "I'm going to make it my eagle scout project to go and make sure every citizen in my retirement area gets to vote." They go door to door, "Have you received your ballot?" And they say, "Yes we have, and here is the ballot. Would you mind dropping it off for us?" That boy scout is now going to do 30 days in the county jail.

REPRESENTATIVE D. BONNEN: Mr. Wu, did you just, in your scenario, say that they asked the boy scout to drop the ballot off for them?

WU: Yes.

D. BONNEN: You did. So then, that boy scout should not have any problem legally, whatsoever, under this bill?

WU: They would under the current bill, not under my amendment.

D. BONNEN: They would not, because current law, would you not agree, allows that if someone asks them to assist them in doing their ballot, they are then protected.

WU: Not under this bill, and that's the point I'm trying to make.

D. BONNEN: Where does it say that in this bill? Where does it change current law in this bill to say that?

WU: The affirmative defense in this bill—the defense of this act—only covers you if you are in the course of your duty to provide medical care—

D. BONNEN: Representative Wu, you're talking about the affirmative defense. You're ignoring the existing law where someone requests their help.

WU: In this section, in Section (c) of the bill itself, "It is not a defense to an offense under this subsection that the voter voluntarily gave another person possession of the voter's carrier envelope." The law itself contradicts what you just said.

D. BONNEN: No, it does not. And, Mr. Wu, in there it says, am I correct to state, there are 10 ballots that you're allowed to do if you're being paid, and what your amendment would effectively do is say that you can do an unlimited number of ballots if you're doing it for ideology.

WU: No. It does not talk about being paid at all. It's about you may not—

D. BONNEN: It does talk about being paid.

WU: In a different section.

D. BONNEN: Correct.

WU: The bill says that you cannot carry more than 10 mail ballot envelopes to the mail box—not at the same time, but in the totality of the election. In the entire election, a person may not carry 10 envelopes to the mail for other people. Think about that. Can I just say this—this law is creating a harsh penalty, and that penalty is 30 days in jail minimum. It says it in the bill itself. The mandatory punishment for a second DWI is five days. The mandatory punishment for a third-degree felony—DWI third—is 10 days. Your punishment is more than three times harsher than a felony DWI third.

If you want a situation where prosecutors will not enforce a law—will find ways to not enforce this, then put this in—leave the bill the way it is, because if you create a situation where prosecutors are asked to choose to prosecute people who are acting as good samaritans and give them unduly harsh punishment for doing their civic duty, you will get strange results. You will get even less prosecutions than you have now. When you ask prosecutors who handle rape, murderers, child molesters, thieves, when you ask them to look at people who have done nothing but good in their lives and helped people out, you ask them to be punished and punished severely, your prosecution rate will actually go down. All I'm asking for—

REPRESENTATIVE MOODY: Explain the difference right now between an affirmative defense and exception under the law.

WU: An affirmative defense has to be something that is raised at trial.

MOODY: So that person is still under arrest?

WU: Yes, the person still has been investigated, still has been prosecuted, still has been taken to jail—if at trial, they can raise this defense. There is still investigation of the act.

MOODY: So it's a procedure that takes place after the arrest?

WU: Absolutely.

MOODY: That the defendant has to prove, correct?

WU: The defendant has to prove it.

MOODY: Okay, or the accused. What's an exception—what would be an exception of the law? If there was an exception, what would that be? It means that you'd be exempt from the prosecution altogether, correct?

WU: Yes.

MOODY: So, wouldn't it be a better way to protect good samaritans to have an exception or exemption from the law rather than an affirmative defense?

WU: I would love to have that, but right now I'm just trying to ask for one small consolation. The one small thing to make sure we don't end up locking up boy scouts.

[Amendment No. 1 was tabled by Record No. 323.]

[Amendment No. 2 by Canales was laid before the house.]

CANALES: Members, I live in a district that has about 160,000 people and the election votes were about 9,000 people. We've got a problem getting people to vote, period. Now we're trying to make somebody that wants to assist by taking a ballot that somebody asked them to take to the mail illegal. If you help more than 10 people, that's a crime. If we don't fix that, we are committing a crime in this body. We're trying to keep people from voting, and that is wrong. It's a constitutional right to vote, and we should have a constitutional right to request who takes that ballot for us. And God forbid he might have taken nine or 10 other ones, because now that person is going to jail. If I want to take somebody's ballot and I happen to have taken nine other ones, I should have the right to take them because that person asked me to take them.

REPRESENTATIVE BURNAM: Representative Canales, you were speaking of the constitutional right to vote and suggesting from a legal standpoint that the right to vote includes the right to ask someone to take your ballot to the mail?

CANALES: I would like to believe that if I filled out a ballot and I voted, that I should be able to choose who takes that ballot for me, Lon.

BURNAM: So, you're suggesting from a legal standpoint, from a Justice Department standpoint, that it could easily be argued that it is a violation of one's constitutional right to vote if you are denied the right to get that vote into the mail?

CANALES: I believe that if you are denied that right to get that vote, and denied the right to select the person you want to take it, that is unconstitutional.

BURNAM: So what you're saying is this is not unusual for the Texas Legislature? Once again, we have before us a vote that is fundamental to the right to vote, and once again, consistent with most of the 20th century, we're talking about denying people the right to vote.

CANALES: What we're doing here is, we're making it illegal for people to choose who they want to carry their ballot, and that's not constitutional.

BURNAM: Tantamount to a voting rights violation.

CANALES: I believe so, and we'll be ashamed when it gets struck down, if this passes.

BURNAM: Well, it won't be the first time that Texas has had something struck down for violating our constitutional right to vote. So, I think you have a good amendment, but I think the bill is hopelessly bad and unconstitutional.

CANALES: What my amendment does, members, is allows people to choose who they want to carry their ballot. And as Americans, I believe, and Texans, we should have that right. And if you don't think that you have the right to tell a person who can—

REPRESENTATIVE SHEETS: I just want to clarify your comments. Are you accusing Ms. Burkett of trying to prevent people from voting?

CANALES: I'm telling you what the bill does.

SHEETS: Okay. Because I think you need to be very careful.

CANALES: I'm not accusing anybody of doing anything. I'm telling you what the bill does, Mr. Sheets. And if you don't like it, well then you can file an amendment as well.

SHEETS: So, you were talking about only 9,000 voters. When you only have 9,000 voters, isn't there an increased incentive to cheat?

CANALES: That would be your opinion. I think that there should be an increased incentive to get out the vote if there is only 9,000 people, in my opinion. The most beautiful right that we have, Mr. Sheets, is the right to vote, and if we're trying to keep people from voting, that's what this does.

SHEETS: So how does this prevent people from voting?

CANALES: If you have somebody that wants to vote by mail, and has somebody in particular that they want to give their mail ballot to, because they themselves cannot drive, and that person has helped more than 10 people, it's a crime now.

SHEETS: So there's not other people who can help them out?

CANALES: What if there's not, Mr. Sheets? I don't know the scenario, but imagine that there is. Should it be illegal for somebody to not be able to—

SHEETS: I'm pretty sure the Democratic Party or the Republican Party would help find someone to get their ballot to the mail.

CANALES: They're obviously not. Out of the eight or 9,000 people that voted in my election, there was, I think on my side, 180 ballots. That sounds like rampant fraud to me.

SHEETS: So, have you ever heard of a case where someone couldn't find someone to help them mail their ballot?

CANALES: No, not right now.

REPRESENTATIVE NAISHTAT: I just want to be clear on what we're trying to do through this amendment. And we're dealing with the affirmative defense to prosecution, and we discussed what that means. So what your amendment says is that the affirmative defense to prosecution can kick in if the voter requested assistance from the person in depositing the envelope. So what you're saying is that if the voter—this can be a person with a disability, an elderly person, it can be a person who has trouble seeing, it can be a person who doesn't drive—but if the voter requested assistance from the person in depositing the envelope, then that person would have an affirmative defense to prosecution.

CANALES: Absolutely, Representative Naishtat. What I'm saying is if somebody that voted asks you to take their ballot, that should be okay because they asked you, it's their ballot. That's what I'm saying, Representative.

NAISHTAT: It sounds like this is the American way.

CANALES: Members, this is simple. You should be able to ask another person to take your ballot and that should not be illegal.

BURKETT: I appreciate Representative Canales' passion, but I move to table.

CANALES: For those of you who, and I would imagine most of you have, seen a mail ballot, it comes in the mail. You have to open that package, you put that ballot—once it's been filled out, it has a signature—you put that ballot in another envelope called a carrier envelope, you have to sign that one across, and when that envelope gets to the voting clerk or the voting judges, they verify that with your request, and those signatures have to match. If not, that ballot is thrown out. The safeguards in place that exist at this point in time to make sure that voter fraud doesn't occur are so strong that people regularly don't vote by mail because their ballots are thrown out. The point being is now we can't even have somebody, asked by that voter, who signed that ballot—

D. BONNEN: Representative Canales, I know you were not here last session when voter ID was dealt with on this floor.

CANALES: I'm glad I wasn't.

D. BONNEN: And I can't tell you how proud I'm not sure I was to have gotten the honor of being the chair of the select committee on voter ID, but repeatedly, if you had been here, I think you would agree, the issue brought by those in opposition to voter ID was that there was not a problem with in-person voting. The fraud existed in mail-in ballots. Would you agree with that?

CANALES: I don't agree that there is a rampant problem with mail ballot fraud. I don't think that's the case.

D. BONNEN: Outstanding, that means that you won't acknowledge where there is an issue, that numerous members of your party, on a regular basis, presented as the only issue that deserves to be addressed.

CANALES: I've never even seen the facts or figures. I've looked for the examples, and if, Mr. Speaker Pro Tempore, you could give me or show me data of fraud, that would be nice, because this doesn't exist. It's allegations, it's empty allegations. There is no hard evidence of voter mail fraud.

D. BONNEN: Actually, I think there is. I, unfortunately, wasn't prepared today to bring it to you, but I think we could get it.

CANALES: And when there have been cases, they've been prosecuted.

D. BONNEN: I believe though, are you aware of the cases that exist in Dallas about mail-in voter fraud?

CANALES: My understanding, according to all the literature, is that's only in South Texas.

D. BONNEN: Are you aware of the conviction that existed in Calhoun County, which may be considered on the cusp of South Texas?

CANALES: Apparently, then, if there was a conviction, the laws for voter fraud are working sufficiently to not have to keep somebody from being able to request that somebody take their ballot.

D. BONNEN: But Representative Canales, this bill doesn't prohibit someone requesting they take the ballot.

CANALES: It sure does.

D. BONNEN: There is not anything in this bill. I'd like you to point to where—

CANALES: It has a collateral effect, Mr. Speaker Pro Tempore, but if you cannot request somebody to take that ballot—

D. BONNEN: The moment someone asks you, if I'm an elderly or not so elderly person who needs that assistance, and I asked you to do this, you are—

CANALES: God forbid that I've taken 10 more, because I'm going to jail.

D. BONNEN: No, you are not in violation of any law if that individual has asked you to do this for them.

CANALES: If I helped 10 other disabled people, I am in violation of this law because you asked the wrong person.

D. BONNEN: I don't think it's about the right or wrong person, I think it's about the law, and if you've made that request, they are not violating the law.

CANALES: I respectfully disagree. If you read the bill, it says that if somebody has taken more than 10 ballots—

REPRESENTATIVE GIDDINGS: Representative, your amendment only clarifies that an individual has the liberty and the freedom of their own free will to ask another person to help me get my ballot to the post office. Is that correct?

CANALES: Representative Giddings, that's exactly what my amendment does. My amendment stands for freedom. I stand here for freedom. I am standing here telling this body that we should have the right to ask somebody to take a ballot for us and it should not put that person in jeopardy of going to jail.

GIDDINGS: Without your amendment, do you agree that there is mass confusion? And let me finish by saying you're an attorney, there are many other attorneys on this house floor, and if there is confusion among you, and we cannot really declare what this bill says in this body, what kind of confusion, what kind of message are we going to send to the voters of Texas?

CANALES: Representative Giddings, that's what I opened up. We don't have enough people voting as it is; now we're trying to prevent the people that have the hardest time voting by which we provide the avenue by mail—we provide it to those that are disabled, those that are in need, those that have trouble getting to their polling places, those that are in our armed forces—we provide the method, and now what we are trying to do is tie their hands, and we might as well just not have voter mail-in at all.

GIDDINGS: I think you have a good amendment. It only has to do with individual freedom and liberty.

REPRESENTATIVE TOTH: Mr. Canales, wasn't it Mr. Wu just a little while ago that admitted that there is a problem?

CANALES: I wasn't, I didn't hear that.

TOTH: He admitted that there is a real problem.

CANALES: Whether Mr. Wu admitted it and whether it is an actual fact are two different things.

[Amendment No. 2 was tabled by Record No. 324.]

[Amendment No. 3 by C. Turner was laid before the house.]

C. TURNER: Members, this amendment simply says that a person commits an offense if the person intimidates a voter by trying to influence the voter to vote, to not vote, or to vote in a certain manner. I move adoption.

BURKETT: Members, I appreciate this protection. This is already in our election law that any voter cannot be intimidated. It is currently against the law, so I move to table on that reasoning.

C. TURNER: I think that if we're talking about enhancing penalties and essentially telling people that they need to be very careful about what they're doing, if they're out helping people have the ability to vote by mail, it is only appropriate that we also send a signal to people who are involved in campaigns that any effort to influence someone's vote by mail, whether that is hey you better vote by mail or else, or you better not vote by mail or else, or you better vote this

way or else. I think we need to make it very clear that in this context, in vote-by-mail election law, that it is unacceptable and illegal to intimidate any voter for any purpose. So, I don't see why this amendment would be a problem. I thought it would be acceptable to the author, but I would ask that you vote no on the motion to table and then vote for this amendment, which is simply to ensure that no voter in the state of Texas is ever intimidated.

[Amendment No. 3 was tabled by Record No. 325.]

[Amendment No. 4 by Martinez Fischer was laid before the house.]

REPRESENTATIVE MARTINEZ FISCHER: Members, just a couple of clarifications. Somebody was asking me why's it important for us to have this debate reduced to writing and placed in the journal, and I was reminded that there are a lot of us here who have not been here a very long time, and you know, regardless of what you think, or how you feel about the Voting Rights Act, it's in effect today and it applies. Anything we do today here on this house floor will not be the last word. It'll be reviewed, either in original litigation in Washington, D.C. or administrative preclearance in the Department of Justice. What I did is, I pulled page 55 and page 56 of the voter ID opinion—it was a unanimous decision—our preclearance was denied, based on discriminatory purposes. The one thing I want to bring to your attention is something that the court said unanimously that was very important. They said that, "The Texas Legislature defeated several amendments that could have made this a far closer case," and then went on to list all the amendments that were brought and debated on this floor and outright rejected just on philosophical principles, and had nothing to do with equity and fairness in making sure that people are given their rights to have one voice heard at the ballot box.

And so, when we start picking winners and losers, I think that's when we run into trouble with our voting rights laws, and so, as you see on this bill, on page 1, at line 11, this law that we are passing or are trying to pass, doesn't apply to our men and women in uniform. There may be a very good reason why—I have not heard that, but I have an idea why we might want to exempt them, because they could be busy fighting for our freedom. But I'm also mindful of the men and women who have served and now find them in their senior status, and they're sitting at home, their freedom and valor is no less respected than the man and woman who's protecting it today. So I have an amendment that I would like to also exclude anybody who is disabled and any senior citizen from the application of this law. I think if it's important that we do it for military, it is certainly important we do it for those who a) may have physical limitations in exercising this right to vote, and b) those seniors who deserve and should have the dignity to vote in the presence of their own homes with people who wish to help them.

BURNAM: Chairman Martinez Fischer, was the purpose of your reading from that court ruling to give kind of meat and example to what some of us have been discussing earlier today? That we are clearly on the verge of doing something unconstitutional, and you're merely trying to help clean up the bill?

MARTINEZ FISCHER: I think that it's important for us to recognize that in federal court, we are all equal. We may not be equal here on the floor, or we may not have the same voting strengths, but we are not the ultimate arbiters of what, you know, is precleared and what isn't. But I don't want anyone to say—well, they weren't aware, that they didn't have any idea of the effects of legislation like this. And so, I think we should try to put our best foot forward and if there is a fix, we ought to fix it together. If we're going to pick winners and losers, well, I want to put seniors in the table on the winners' column, so that they can vote, and they can maintain their dignity, and they can exercise the vote that they've been exercising.

BURNAM: Many of those seniors are veterans, as you pointed out?

MARTINEZ FISCHER: Absolutely. And to take it a step further, there are many attempts—VFWs in people's districts organized get-out-the-vote rallies to help people to vote. You know, they aren't licensed by the state, so they could be problematic.

BURNAM: So while the house is relatively quiet and calm, you're simply quietly and calmly pointing out what has already been provided to us—information by the federal judges that have had the most recent say on Texas' performance, specifically, the legislature-last-year's performance with regard to constitutional rights to vote?

MARTINEZ FISCHER: All I'm saying, regardless of what we do here, it's important to recognize that the amendments that we debate, the amendments that we vote on, actually get looked at, and they get scrutinized. And just like the debate two years ago, on whether we're going to use a concealed handgun license or a college ID, those things were looked at, and they were measured, and the court decided that it was fair to do it over here, perhaps we should have done it over here. And all I'm saying is that we are going to exclude the military, which I think there might be a rational reason why we should do it.

We should also exclude those that may have limitations, whether it be mobility because they're disabled, or there may be, you know, the lack of resources—transportation, fixed incomes—whatever it is, we should be providing the most flexibility for the people who want to vote. And obviously, if there are harvesters out there and people doing illicit things that should be prosecuted—there have been plenty of prosecutions. The attorney general's office is riddled with cases where they have prosecuted. This is not going to aid in the prosecution, but this is certainly going to limit people who have been voting, and so, you know, regardless of what you feel about the legislation—what your perspective is—if we're going to start deciding who should be exempted and who shouldn't, if soldiers are going to be exempted, I think, so should our seniors and our disabled.

BURNAM: So you're just simply saying that your amendment would move us closer to being in line with what the courts have already ruled?

MARTINEZ FISCHER: I'm just saying that regardless of how you feel, about what you do on this floor, this isn't the last word, and the things we do on this floor, people pay attention to them, and in fact, they've made judicial determinations based on our behavior and actions on the floor—and that's all I'm trying to point out.

BURNAM: In fact, in that court ruling, they made many references to those dialogues that occurred on this house floor, is that correct?

MARTINEZ FISCHER: That is correct.

BURNAM: So, you can anticipate, if there is any court activity with regard to this legislation, all of the conversation that's occurred today during this debate would be a matter the courts will take into consideration?

MARTINEZ FISCHER: That is true.

BURNAM: Thank you so much for offering this amendment to clean up this bill.

REPRESENTATIVE MORRISON: Mr. Martinez Fischer, I guess what I don't understand is, I thought during our discussion last legislative session, do you feel like there is not any voter fraud by mail?

MARTINEZ FISCHER: No, I believe that if we are going to address voter fraud, we should also address the illegal-poll-worker activity, and we should deal with illegal electioneering, which is really the 70 to 75 percent of all voter fraud in the State of Texas. So I do recognize that mail ballot fraud is an issue; I do not believe it is specifically related to an individual who can pick up ten mail-in ballots or not. And so, if there is a desire to fix this, let's roll up our sleeves, but Madam Chair, as I've looked at the witness affirmation form, many minority-community advocates who are opposed to this bill, it is my understanding that none of their thoughts and impressions were instituted into the final piece of legislation, and so, I would like to think that their opinion matters as well, particularly, if the representation on the floor is going to be made that this is mostly prevalent in communities of color. Well, if it's mostly prevalent in communities of color, we should take the perspective of the colored community to fix it.

MORRISON: Well, and I will have to disagree with you on one point, that Representative Burkett really did work with whomever came to her with issues to address, because I know there were several people that did, and she worked with them. But, did you know that the Disability Rights of Texas actually did not testify against this bill? Basically, she said that she was really encouraged by this bill, because she was concerned about those with disabilities that were being taken advantage of, and she liked that there were thoughts being put into this legislation. And also, do you not feel that this is trying to protect our over-65 age and those that have to have a caretaker or in nursing homes, by protecting them, because it does say—does it not—that they can have their caretaker help them with the ballots?

MARTINEZ FISCHER: Sure, and I think you would also agree and recognize that not our entire senior population is being taken care of by caretakers or by state-licensed facilities. Many of them have the independence to maintain their own affairs in their own homes and make their own decisions independently, and if they make the independent decision to have their mail ballot be assisted by somebody, then that's their decision. We know in election contests, which is another amendment I will bring, so if you and I agree on this, then we should agree that when these things are ferreted-out in election contests, that all these issues are aired out. And so, the notion that if we don't do it here, then we will never be able do it. I think you and I both know that when you have an election contest, we're bringing witnesses, we're bringing those vote harvesters, we're bring everybody into a court of law. They're being sworn in, and they're being questioned and examined, and I've litigated successfully voting rights cases in South Texas, and I don't know if you have or know anybody that has—they do work.

MORRISON: But, Mr. Martinez Fischer, in current law, as we are now, my mother was eighty years old, and she passed away last year, but she got her mail in by ballot every time. And absolutely she would say, okay, I know a lot of these people, but I need help, would you help to know who these people are? And she was very up on what was going on. Would you not agree that in current law that someone can assist someone that has a mail-in ballot—that is a family member or someone who is there with them? That is in current law, correct?

MARTINEZ FISCHER: That is current law, but it's not the circumstance for every senior in the State of Texas. I mean, again, what I'm trying to do is, we want to address public policy to fix specific examples, and it's not a one-size-fits-all category. I think if you and I agree that not every senior in the State of Texas has a friend or family member who lives with them that can help them or has the support system, like Representative Turner has for his mother, or has a licensed facility/caretaker like other people, there are a) folks who can't afford that, and b) may not have that family support system. So, what are we going to do for them? And I think when we look at this through the eyes of public policy and federal preclearance, we're not looking for the instances that you and I are talking about. We're looking at those instances that are not being anticipated in this legislation, and, frankly, I don't see anything that addresses the instance where you have a senior who doesn't have a family support system, who lives alone, and chooses the preference to have somebody help them, whether it be an informal gathering or a formal gathering, a VFW event—you name it—we should be anticipating and expecting and preparing to provide flexibility for those circumstances, and not coming up with these rigid rules because it fits your particular environment or my particular environment. We have to be sensitive to what is going to impact 25 million Texans.

MORRISON: But don't you agree this bill gives that flexibility, that someone could assist and bring in up to ten ballots?

MARTINEZ FISCHER: Well, to an extent, but when we find out that we are going to carve out the military, and it hasn't been explained or articulated as to why we're going to do it, it's not just active-duty abroad—it's everybody in the military. I don't know why we would do that for them and make a declaration that we can have that exception but for everybody else—

BURKETT: This particular part of the bill is there to protect our military and not to interfere with them in any way, so I think this would basically do just that.

SHEETS: Ms. Burkett, wouldn't you agree with me that the military is distinguishable from all others covered under this bill?

BURKETT: Absolutely.

SHEETS: Wouldn't you also agree—I mean, I've had the personal experience of doing a mail-in ballot while I was serving in Iraq—we don't have the same luxuries, necessarily, that people back home have, wouldn't you agree?

BURKETT: Absolutely.

SHEETS: And wouldn't you also agree that in the military you have voting rights officers that are there to help and assist the members in voting?

BURKETT: Absolutely.

GIDDINGS: Again, Representative Burkett, I think this is a bill where things could be worked out, but as they are now, it's a bill that's very confusing. We've just talked about the military, and we all support our military, them working for our freedom and that kind of thing, but this provision does not speak to people who are overseas, or serving away from home, or whatever—it speaks to spouses and dependents. And the way I read this bill, is a person could go out and harvest—if that's the word you want to use—as many ballots as they wanted to, as long as the persons that they've harvested the ballots from were either members of the military or members of a military person's family. Help me understand that.

BURKETT: The goal behind this—the chairman of the Elections Committee was concerned that in instances like what Representative Sheets just presented, that there could be issues with, maybe, the officers that are in charge of getting together mail ballots to return to the state would fall under this rule. So, we were trying to make a defense mechanism for them as well, so that was our goal with that.

GIDDINGS: Well, you missed your goal on that Representative Burkett, because I would understand the situation you just spoke to. Your bill has none of that in there, so the way your bill reads now, a person who is a member of the military or a member of a military person's family, you could gather or harvest as many ballots from persons in that category as you wanted to. I don't know what your intentions are, but that's not what your bill says.

BURKETT: It does say it.

GIDDINGS: So help me understand.

BURKETT: I explained the intent of the bill—to make sure our military were not disenfranchised in some fashion, or persons working in that capacity were going to be having the same type of defense as the folks who are working in the different homes.

GIDDINGS: The intent is not going to be there with the prosecutor. What's going to be there with the prosecutor is this bill, and so, if that is the intent of your bill, we have the time, we have the place, we have every tool that we need to change that.

BURKETT: Ms. Giddings, do you have something you think will correct that? Because the bill that Trey Martinez Fischer has brought up does not.

GIDDINGS: No, but as the author of this bill and in view of Section 5 of the Voting Rights Act, I know you want to get it right, and I want to help you get it right. So, I think it's just as much your responsibility as mine to try to come up with an amendment that takes care of that, and I'll be happy to work with you on that—

BURKETT: I appreciate that—

GIDDINGS: That's not what your bill says.

BURKETT: Please come down. I'd be glad to work with you on that.

DALE: Representative Burkett, so this amendment talks about people with disabilities, right?

BURKETT: That is the purpose—well, which amendment are you talking about? This one that Mr. Martinez Fischer's given us?

DALE: Martinez Fischer's.

BURKETT: It talks about it, but it's put right in the middle of our section that we're trying to make sure that our military are not disenfranchised as well.

DALE: Okay, so how does one get a mail-in ballot, anyway? You have to qualify for it, don't you?

BURKETT: You've got to be either disabled, over the age of 65, or you are going to be out of the district that you vote in at the time of the election.

DALE: So, it's pretty easy to determine if someone is over 65 based on current records, don't you think?

BURKETT: Absolutely.

DALE: And if you request a mail-in ballot, because you're going to be out of the county, that's mailed to the location outside of the county where you're going to be, right?

BURKETT: That is correct. I think that most of us here probably use that exact same rule when we're here during session.

DALE: So I think what we've seen in a lot of these cases—would you agree—that it's the block for disability that's most often checked where we see a lot of the fraud related to this and doesn't necessarily mean the person is actually disabled? Would you agree?

BURKETT: That is unfortunately true, that they are preying on people who are disabled, and that is unfortunate.

DALE: Either they're preying on people that are disabled, or people are just saying they are disabled to get more mail-in ballots. Maybe they are sent to one specific address, and being voted by a different person?

BURKETT: Those, of course, are the bad actors that we're trying to get, to reach with this bill. We do not want to disenfranchise any voters.

S. TURNER: Representative Burkett, I'm going to follow up again. So, if, for example, since the bill doesn't apply to soldiers who are overseas, it applies to anybody. Let's say a soldier is in Afghanistan, but his wife is in Austin, Texas.

BURKETT: Yes.

S. TURNER: And his wife is a part of this packet. So if his wife is in Austin and is a part of the packet, it could be 10 ballots, or it could be 100 ballots, or it could be 1,000 ballots? Is that how your bill reads?

BURKETT: Can you say that again, please?

S. TURNER: The language says, this subsection does not apply to a carrier envelope containing a ballot voted by a member of the Armed Forces of the United States or the spouse or dependent of a member, as long as the ballot, as long as the package—the envelope—contains a spouse or the dependent. It can be 10 ballots. It can be 100 ballots. It can be 1,000.

BURKETT: Are you saying the member of the family could have 100 or 1,000 ballots?

S. TURNER: It says, "the carrier envelope." "The carrier envelope," I'm reading from your bill, "This section does not apply to a carrier envelope containing a ballot," "a," and in the language, the words have meaning. "Containing a ballot voted by a member of the Armed Forces of the United States or the spouse or dependent." So as long as the carrier envelope contains a ballot—

BURKETT: Correct.

S. TURNER: Of a spouse—

BURKETT: Correct.

S. TURNER: Then that package envelope can have 10 ballots, or 100, or 1,000?

BURKETT: No, the package cannot—the envelopes can't have more than one ballot in it, sir.

S. TURNER: How many votes can be in a carrier package? Let's say, if you were in—if you were coming from Afghanistan—how many ballots could it be? No more than 10?

BURKETT: Are you talking about the overall mail coming from Afghanistan?

S. TURNER: The carrier envelope—how many ballots can be in the carrier envelope?

BURKETT: The carrier envelope—it refers to the envelope that is sent to you with your ballot, enclosed with your ballot, and you mail it.

S. TURNER: How many can be gathered?

BURKETT: A ballot with an envelope.

S. TURNER: But how many can—

BURKETT: I think you're misreading it, Mr. Turner.

S. TURNER: Well, if I'm misreading it, I think I'm somewhat educated. I may be wrong. I could be ignorant, but, so help me to understand your bill, because, I'm sorry, if I can't read it, then some—

BURKETT: Mr. Turner, it's one ballot per envelope that you are sent from the secretary to vote with. This isn't talking about contract carrier, or, even if it were, this bill does not address contract carriers, or the U.S. Mail, or the Army's mail.

S. TURNER: The language above says, a person, Subsection 6.86006(f)(4) applies, may not deposit in the mail or with a common carrier or contract carrier, more than 10 carrier envelopes containing ballots voted by other persons in elections. And then there's an exception. I'm asking, how many? Does that exception totally take you around the previous language?

BURKETT: It's one ballot per envelope that comes to you in the mail, as in an army or military individual. My understanding is that you're asking me if there are several of these put in an envelope to come back to the United States to Texas—that's not addressed in this bill. That's not part of this bill.

S. TURNER: Maybe I don't know. Explain to me "more than 10 carrier envelopes." What does that mean?

MARTINEZ FISCHER: Again, I just want to be mindful of what we're doing here. We're picking winners and losers. I didn't hear an articulate reason as to why we would exempt the military, other than the reasons why they're overseas. I think all of us know, including Representative Sheets. He knows about the MOVE Act for the military overseas—the Voter Empowerment Act. Very important act—there is probably nothing more we could do to augment the MOVE Act on this floor that would be constitutional. And, so, if we're going to say that one aspect of federal law is important as it pertains to our military, but not so much when it comes to another federal law, that is not only a federal law, but a federal law that happens to be constitutional, as we speak, that has been challenged, tried and true, is the law of the land, I believe we begin to make these mistakes. Whether you don't like it; don't like Section 5; don't like the fact that there is this protection placed on Texas; that's not what's at issue here.

What's at issue here is the record of this bill and the explanations that have been advocated as to why we need it and why it is important to exempt certain people and not others. Most of you know that that's a 14th Amendment

argument, and there's not been a very good reason, and, so I am happy to withdraw this amendment, if the author of the bill is going to postpone this bill so we can come up with a fix—what Representative Giddings is talking about—but, obviously, looking at the scrum on the back mic, there seems to be a lot of interest in wanting to get this right. I offer that, and I will offer that to Representative Burkett, and we're not going to lose anything other than time and effort and the ability to work in good faith, if that's the intent. But if the intent is just to pass this my-way-or-the-highway, well, we don't need to do that, we just have the vote and move on with our day, and we know that we'll just review this at another time on another stage. And so, I ask that you vote no on the motion to table. And the alternative—I will withdraw the amendment, provided that Representative Burkett withdraws the motion to table and postpones this bill so we can try to fix it.

SHEETS: Mr. Martinez Fischer, wouldn't you agree the military is distinguishable from the other classes you're speaking of?

MARTINEZ FISCHER: I think veterans are distinguishable, whether your service is active or you've served and you happen to be a soldier who's confined to your home.

SHEETS: Or a good marine?

MARTINEZ FISCHER: Or a good marine, in that case—you know.

SHEETS: Let me ask you this, if you're in the military and you want a mail-in ballot, what are the requirements?

MARTINEZ FISCHER: I have no idea, but I know that there's a federal law that addresses that.

SHEETS: Did you know that you have to be outside your home county?

MARTINEZ FISCHER: I believe that in the State of Texas, yes, that you have to say you will not be in the county during the time of the election. That is correct, but that's not just for the military, Representative Sheets, if you did not know, that's for anybody who will be not be in the county under state law.

SHEETS: But we're talking about the military here. In order for you, as a military member, in order to vote by mail, you will have to certify that you will not be in your home county on the day of the election, is that not right?

MARTINEZ FISCHER: Right, and that doesn't necessarily mean you're overseas. You could be in another county.

SHEETS: Right. You could be in the State of South Carolina; you could be in the State of California; the State of Oklahoma; you could be in El Paso—

MARTINEZ FISCHER: You could be in the state legislature—

SHEETS: You could be in Galveston—

MARTINEZ FISCHER: You could be in the state legislature—

SHEETS: Exactly. Now, that's not the case with the other classes that we're talking about here. They can be in their home county, and they can still do a mail-in ballot, is that not correct?

MARTINEZ FISCHER: Well, it is correct, if you're willing to go with me and say that there are probably some men and women who are confined to their homes that wish they could leave their county, that don't have the luxury, because their mobility is impaired. They may have limited resources; they may not have a car; they may not have a family person to take them out of the county; and, so—

SHEETS: This bill does not prevent someone from being able to have someone mail in their ballot for them, does it?

MARTINEZ FISCHER: This bill gives seniors the independence and flexibility to cast their vote in a manner and means that they've always done, and if they happen to rely on the neighbor in the neighborhood, who's just happened to build up a tremendous amount of goodwill, who's the block captain, or who's the neighborhood watch person, that says, "Oh, by the way, I'm taking these ballots in, you want me to help you out?" Why can't we provide an exception? Why is 10 the magic number for this legislation?

SHEETS: And then you were talking about the process here, and during the process, you said that you've not been given enough time to work out a workable arrangement here. I believe that this bill has gone through committee, has it not?

MARTINEZ FISCHER: If it's on this floor, I would imagine you're right.

SHEETS: And, so, it has gone through a process. In fact, we're dealing with a committee substitute, because the author did work with those in opposition to her original bill, to make the bill a compromise bill, did she not?

MARTINEZ FISCHER: I don't want to speak for all the members of the committee, but there's, honestly, a member of the committee who voted no. We just had the amendment brought to this floor—wasn't accommodated, wasn't augmented. There was another member of this committee who also happens to be a minority, who was absent on the day of the vote, and he's indicated that he's tried to work with the author of this bill—anybody who would listen to him about making this bill better. And, so, suffice it to say, we're two-for-two with regards to ethnic minorities who tried to make this bill better, and weren't provided a pathway. So, again, I say that we can withdraw this Representative Sheets, and we can try to fix it. We can roll up our sleeves, work in good faith, bring this back on Monday with an agreement, or at least we can pat ourselves on the back and say we tried.

SHEETS: Well, I appreciate your agreement that the military is distinguishable from the other classes. Have a great day, sir.

MARTINEZ FISCHER: Well, we covered that already, but I'm saying that we should work in good faith to get this bill right, not pass it because we can.

CANALES: Have you ever heard the phrase or saying, what's good for the goose is good for the gander?

MARTINEZ FISCHER: I have. I don't know what it means, but I have heard it.

CANALES: What's good for goose is good for the gander means that if you do it for some, you do it for all. And I think we maybe ought to apply this principle to the floor. If somebody asks you to push your button while you're on the other side—10 times—and you can't reach your button, maybe we ought to criminalize that, too. Because that's voting for somebody.

REPRESENTATIVE SCHAEFER: Do you see any difference between someone who is assisting someone with a mail-in ballot, using a military person's, or someone who is assisting an aged Texan with their ballot?

MARTINEZ FISCHER: Honestly, Representative, I didn't understand your question.

SCHAEFER: Sir, you've had some questions about, you know, what's different about a member of the military versus treating someone who's disabled or aged, correct?

MARTINEZ FISCHER: I know we had discussions about the military men and women and disabled and seniors—yes, we do.

SCHAEFER: And isn't it correct that someone who's assisting a member of the military, who's another member of the military—with a ballot—is subject to the Uniform Code of Military Justice?

MARTINEZ FISCHER: I would imagine it applies to all soldiers, yes.

SCHAEFER: That's right, and, so, when a member of the military is handling a ballot for someone, they are not on an equal footing with an average Texan. They are under a different set of rules, and they have guidelines that they have to follow. So, that it would be true—wouldn't you agree—that if a voting officer in Afghanistan was assisting other people with a mail-in ballot that they have another set of federal rules that they have to follow?

MARTINEZ FISCHER: Well, I want to be very clear and respectful to your question, because I don't believe we define honor based on who has a Uniform Code of Military Justice and who doesn't. I think we all have honor to do the right thing. I think people when they are predisposed will do the naturally right thing. I don't think neither you nor I should be the individual, sitting in the seat of judgment, judging others, whether you're a senior, whether you're disabled, whether you—

SCHAEFER: I would agree with that, Mr. Martinez Fischer, but my point is that they are not equal under the law, in the sense that the members of the military are under a different set of guidelines they must follow, in that, there are additional requirements that they must follow.

MARTINEZ FISCHER: I know one doctrine in this subject matter, and that is the doctrine of one person, one vote, and, so, because somebody has a code of military conduct doesn't make that person's vote more important than the disabled veteran who is sitting at home who is not subject to a code of a military conduct. So let's be clear. We are talking about votes. We're talking about

people's constitutional rights. Your constitutional right to vote is no greater than mine. We have the same constitutional right to vote. You and I may have a heightened right, because we get to vote on people's behalf and make decisions on this house floor, but when we go home, we're carpenters, and bankers, and lawyers, and teachers, and members of the community, just like everybody else. We put our pants on just like everybody else. These laws affect you and me the same, whether we serve in this legislature or not. And, so, when we're going to do that, sir, we should probably do it with an eye to making it fair and applicable to everyone, and, if we're going to make a decision to exempt and carve out and hold people to a different standard, let's evaluate those options for everybody.

SCHAEFER: Thank you, Mr. Martinez Fischer. My only point is that there is a legitimate legal reason to carve an exception out for members of the military.

MARTINEZ FISCHER: I think yes, but let's look at this, people—

[Amendment No. 4 was tabled by Record No. 326.]

[Amendment No. 5 by Moody was laid before the house.]

MOODY: What this amendment does is it changes the affirmative defense provisions within the bill to an exception under the law. Now, when you have an affirmative defense under the Penal Code, the accused—or there has to be evidence of that, there has to be evidence to get the affirmative defense given to the jury. So the accused is required to put on evidence, or there must be evidence presented during that trial for them to even be able to receive the affirmative defense. If we turn this into an exception, which is what this amendment does, it means that the prosecuting attorney must negate the existence of the exception. This places the burden squarely on the state, and I think it is a fair way to implement these two provisions rather than by using affirmative defense. I move adoption.

BURKETT: I move to table the bill; we feel like the affirmative defense that's in there is sufficient.

MOODY: I'll echo the thoughts of my colleague, Mr. Martinez Fischer. We are talking about a constitutional right. We're talking about people's right to vote, and so, if we're going to put someone in the courtroom and charge them with these offenses, we should at the very least make the state negate these elements rather than the defendant have to put evidence on to prove them to the jury. I think it's simple fairness. And it's just the way it's going to work in the courtroom, and it puts the burden squarely on one side, and I think that's the fair way to implement these two provisions rather than making the burden on the accused in these situations. I think that—

C. TURNER: I caught just the last part of what you were saying, and I want to make sure that I understand, because unlike you, I'm not an attorney. Are you essentially saying that the right to vote is so sacred, and that the ability to participate in the electoral process is so fundamental to our democracy, that there should be a higher standard—and a higher burden on the state, in this case—to prosecute someone?

MOODY: Well, it's not that it would be a higher burden, but that the burden is placed on the right party to the case. So, right now under the way the bill is written, the prosecuting attorney doesn't have to put on any evidence negating whether this person was acting as a caretaker of the voter. They don't have to address that at all. They don't have to bring any of that up, and that's the way it's written. I think the burden—and it's beyond a reasonable doubt, like all other criminal trials—should fall squarely on the state. And I'm a former prosecutor. I've walked into courtrooms many, many, many times, and this is a very high burden to me, but you know what? That is the burden that we should take on as prosecutors, and that's the burden that we should take on when we are talking about valuable rights.

I think it's an important distinction to make, and I know that we're kind of getting into the weeds on legal burdens, but this is the proper place for it to be housed, as an exception, so that the prosecuting attorney—if we're going to allege that this is happening, the prosecuting attorney has to negate that this person wasn't engaged as the caretaker, or they have to put on the evidence. I think to do otherwise is not a fair application of the law.

C. TURNER: And as a former prosecutor then, you would be very comfortable that you would still have the ability to prosecute under your amendment, and it's totally appropriate as a prosecutor for you to be able to do your job under the language of your amendment?

MOODY: Absolutely. When I walked into a courtroom, I took very seriously the oath that said my duty was to do justice, not simply to convict. So these types of provisions don't get in the way of a prosecutor doing their job. In fact, it makes sure that they carry out that very high duty, that high calling to do it the right way. And I think especially because we're talking about people's right to vote, to house it on the state's side, the burden on the state's side, is just a fair way to implement this law.

C. TURNER: It seems like a very reasonable amendment, and I think it's good that we're getting into the weeds on some of this stuff because this is such an important matter involving the right to vote.

[Amendment No. 5 was tabled by Record No. 327.]

[Amendment No. 6 by Burnam was laid before the house.]

BURNAM: This amendment is really very similar to the one that you just voted down that Trey Martinez Fischer offered up. The difference is that we clearly, explicitly talk about income and how that relates to your access to the ballot. This amendment says "person with an income below 100 percent of the federal poverty level." All of you have people in your district that are below 100 percent of the federal poverty level, but the district that I represent in Tarrant County is the lowest income district in Tarrant County out of 11 of us. I have more people below the 100 percent level income than any of the 11 districts.

So on behalf of my constituents, I'm bringing to you this notion—it costs money to vote by mail. It costs a stamp to mail in the request to vote by mail, and it frequently, depending upon the nature of the election, costs more than a first

class stamp to return the ballot by mail. That's the reason a lot of times these extremely low income people, who have every bit as much right to vote as you do, need economic assistance in exercising that right to vote. Therefore, I would ask you to join me in supporting this amendment to make sure that we protect these extremely low income people's right to vote.

BURKETT: Members, I noticed that Mr. Burnam's amendment is right in the middle of the line about our military. I have since talked with Chairman Morrison, who is our Elections Committee chair, and she reminds me that all of our members of our military are covered under the MOVE Act, and as those things come in, we are filing bills to appropriately address them, which is one reason this section was put in there in that way—to address your concern, Ms. Giddings. It's not covered here because it's covered under the MOVE Act, any kind of election problem they have. These bills, there are several bills that will be hitting the floor, but that is one reason we had this in there about the military.

GIDDINGS: Well, Ms. Burkett, I will—and I'll find a way to ask the question after I make this comment—I am very appreciative that we were willing to admit that that section is very fuzzy and needed clearing up. So may I thank you for that?

BURKETT: I appreciate you bringing that to my attention, Helen, and I hope you got your question answered. In light of that, this is just not an appropriate, I don't think, change in this bill, so I move to table.

BURNAM: Members, while I disagree, I'm going to withdraw this amendment. I appreciate the opportunity to discuss with you that making it more difficult to vote for low-income people is inappropriate.

[Amendment No. 6 was withdrawn.]

[Amendment No. 7 by Wu was laid before the house.]

WU: Members, I want to start out with an apology. I want to apologize to Representative Burkett for not being more ingressive in helping working these issues out before it came to the house floor. I am a freshman, I don't really know how these things are suppose to be handled, and I do sincerely apologize for not bringing these issues to her attention earlier. And along with that, I want to tell you that I am—if you believe me or not—I am sincere in my efforts to try to help work this bill. I have said I'm not opposed to the idea of this bill. I have said on this front mic that I agree that there is a problem. I have said on this front mic that if amended, I will support this bill.

What I am trying to do is to make sure that the defense that is provided in this bill actually does something rather than nothing. The affirmative defense in this bill—let me back up a little bit. My amendment that I have provided right here takes into account the suggestions, and the questions, and the concerns that any members who voted to table last time gave me. I have—basically, this defense will not cover anyone who has paid, it will not cover anyone who is attempting to electioneer, and it will not cover anyone who is attempting to affect the outcome of the election itself. This amendment, this defense with this amendment would only cover true good samaritans, people who are trying to do

good things. And the question that comes up is why don't people just know what the law is. Why don't people just know you can't take more than 10? How many of you here would actually know that if you weren't sitting here right now? How many of you in here would know very minute details of election law if you weren't candidates?

I'm trying to fix a situation where the defense in the bill does not actually cover anyone. The defense as it's written states that it has to be done in the course of the person's duties. How many of you know nurses, in their contracts, say you're supposed to help with elections? I'm going to say there's probably zero out there. No one will fall into this exception. All I'm trying to do—this is not to shunt the bill—this is to say that the actual defense in here actually works. The defense as I have amended it, or as I propose to amend it, will not cover any of the bad actors that we have been talking about. It will not cover people who are paid to vote harvest. It will not cover the organizers who are trying to change the outcome of an election. It will not cover the precinct chair who's going around doing this. It will only cover true good actors. That's all I'm asking for.

BURKETT: Again, Representative Wu, I believe this defense act is in there for people who are working, and to assist those people in the nursing homes, and we want to make sure we give them the option be able to do that, so I move to table this motion.

MORRISON: Representative Wu, I know that you have some issues with the bill, correct? You do have issues with the bill?

WU: Yes.

MORRISON: And this was a bill that was heard in our committee, correct?

WU: The substitute, or yes, it's essentially the bill that we heard in committee.

MORRISON: And you had some questions that you asked Representative Burkett, correct?

WU: Yes.

MORRISON: Are you, I mean are you trying to alter the bill at this time to change the bill?

WU: I don't know how to answer that. I mean I'm trying to amend the bill to fix the affirmative defense in the bill. So, I guess the answer would be yes.

MORRISON: Could I ask you if you tried to fix the bill while it was still in committee, when Representative Burkett was actually meeting with people?

WU: Madam Chair, again, I'll apologize again profusely that I was not aware that we could change bills in the committee process. I didn't know we were allowed to add amendments to bills in the committee process, and again, I apologize to you and Representative Burkett.

MORRISON: No, and I'm not asking for that. I just want to make sure that you know there is a process, and I'm sorry that didn't work out, but there is a process, and this bill can be altered at another time. And I just want to make sure—

WU: Again, I apologize profusely. I'm still learning the process. I really wish I could have done this the right way.

TOTH: Gene, come on, "committee substitute," you've heard of that, right?

WU: Absolutely.

[Amendment No. 7 was tabled by Record No. 328.]

[Amendment No. 8 by J. Rodriguez was laid before the house.]

REPRESENTATIVE J. RODRIGUEZ: This amendment simply would delay the implementation of the bill until precleared by the U.S. Department of Justice, and I move adoption.

CANALES: So what you're asking this body to do is to pass an amendment that says if this is passed into law, that we wait to implement it until it's precleared by the Department of Justice.

J. RODRIGUEZ: Exactly.

CANALES: Wouldn't that be prudent? Because if they come back and say this is not legal, we've wasted time and expenses instituting or trying to enforce a law that's illegal to begin with.

J. RODRIGUEZ: I think it would be prudent and certainly efficient to make sure we put this in the bill. I know you're going to hear an argument, possibly, that that's implied, that every election law has to be precleared, but I think it's an important point to put in the bill, because the one that we'll vote on if we don't would have an effective date of September 2013.

SHEETS: Mr. Rodriguez, how would your amendment take effect if the Supreme Court overruled Section 5 of the Voting Rights Act, since they're taking that up right now, aren't they?

J. RODRIGUEZ: We'd have to wait. The amendment basically says that until this specific one is precleared, this bill would not take effect. So it would be delayed until that decision is made.

SHEETS: So if the Supreme Court strikes down Section 5 of the Voting Rights Act, would this law still be subject to the same provisions as Section 5, even though that's stricken if we applied your amendment?

J. RODRIGUEZ: Can you restate the question?

SHEETS: Currently, Section 5 of the Voting Rights Act is being challenged in the Supreme Court, is it not?

J. RODRIGUEZ: Correct.

SHEETS: If the court strikes that provision of the law and says Section 5 is unconstitutional, if we accept your amendment to this bill, are we still subject to those provisions?

J. RODRIGUEZ: I think it would essentially make this a moot point, if that is struck down as unconstitutional.

SHEETS: Okay, because at that point, would this law be ineffective, because the district court is not going to review the law because Section 5 precludes them from doing so, and we would have a portion of this bill that says it's not enforceable until the court rules on it, and the court won't rule on it. So, while I understand what you're trying to do, the current law already provides that this has to go through preclearance if it falls under the category of Section 5. So if that's the case, your amendment's unnecessary. And if the court does strike down Section 5 before this gets to the court under the law, as it was required to go there, we would be stuck in a place where this bill would be unenforceable because Section 5 is unenforceable.

J. RODRIGUEZ: I would disagree. I know your position is it's not necessary; I would still say that maybe it's implied under the election laws, but I still think it's important to put it in writing in the law that it has to be precleared before it becomes effective.

SHEETS: Unfortunately, I think you're putting this legislature and you're putting this state into an unnecessary trap if the Supreme Court rules against Article 5 of the Voting Rights Act.

J. RODRIGUEZ: I think we're doing that by even taking up this bill.

REPRESENTATIVE LEACH: The way I understand it, this amendment will require us to, basically, if we vote on the bill and approve it, it won't become effective if and unless and until the Department of Justice preclears it.

J. RODRIGUEZ: Exactly.

LEACH: Are there other pieces of legislation that we're going to pass over the next 30 days that you think the Department of Justice might take issue with?

J. RODRIGUEZ: I think if they relate to potentially suppressing voter rights, absolutely.

LEACH: Well, but other issues, as well. I mean, the Department of Justice might take issue with other things that we're voting on here in this body, so are you saying that we ought to consult and wait on the Department of Justice's approval before we vote bills out of this house?

J. RODRIGUEZ: I think that's on an issue-by-issue basis, Mr. Leach. I think that Section 5 of the Voting Rights Act has already spoken to election issues, and I think that's what—

LEACH: I understand what you're saying with respect to Section 5 of the Voting Rights Act, but you can understand our position in that you've opened Pandora's box if for every piece of legislation that we vote on here to become law, we have to wait on the Department of Justice to give its approval on.

J. RODRIGUEZ: Sure, and I understand that you're talking about prospective pieces of legislation. My amendment simply impacts this particular piece of legislation.

C. TURNER: I just want to make sure I understand, and the body understands, your amendment. It's simply saying the law won't take effect unless preclearance is granted under Section 5 of the Voting Rights Act. Is that right?

J. RODRIGUEZ: That's correct.

C. TURNER: And then what another member was asking a minute ago, obviously if the Supreme Court invalidated Section 5 of the Voting Rights Act, then your amendment would be moot, right?

J. RODRIGUEZ: Exactly.

C. TURNER: So there's certainly no harm in us putting that amendment on there to say, especially given the lengthy discussion we've had today on this bill, and where a number of amendments that have been offered by representatives who represent majority minority districts have been voted down pretty much on a party line vote all afternoon, there is certainly nothing wrong with this legislature saying we feel very comfortable that what we have done conforms with the Voting Rights Act, and we invite the DOJ or the courts, depending on what the attorney general decides, to review it. Is that right?

J. RODRIGUEZ: I think that's absolutely right, Mr. Turner. This provides a backstop, so that if this body feels this is the right thing to do, then we should have no problem saying we'll subject it to review under the law and then come back and make it effective at that point.

C. TURNER: Absolutely. I agree with you.

BURKETT: I feel like the Voting Rights Act is in place currently, and under Section 5 everything we do on this floor that changes anything to do with election law has to be cleared by the DOJ or by the district courts up in D.C. So, for that reason, I'll be tabling the amendment.

MORRISON: Do you have any reason to believe that this bill would be in violation of the Voting Rights Act?

BURKETT: No, Chairman Morrison, we believe that should this bill should pass and become law, that it would be subject to approval by the Department of Justice under current law, and we believe it will pass fine. I've also had extensive conversations with the secretary of state's office, the attorney general's office, and they do not believe this would in any way violate the Voting Rights Act, and again, anything we do is subject to the DOJ's approval anyway under our current laws.

J. RODRIGUEZ: This simply does not impact the intent or any part of the law, it simply impacts the implementation date that we have preclearance from the DOJ. I'd ask you to vote against the motion to table.

[Amendment No. 8 was tabled by Record No. 329.]

[Amendment No. 9 by Nevárez was laid before the house.]

REPRESENTATIVE NEVÁREZ: Earlier in the debate, we were talking about the number of ballots that would be affected by this bill, and the number suggested was 10, and it seemed to be a very arbitrary number based on the discussion

that's being had. So, in light of some of the comments regarding maybe some school projects, or some kids, or other people that would like to assist voters, my amendment simply strikes the 10 and raises that limit to 30 ballots, because as I see this today and in this debate, what we're looking at is a very arbitrary number, when you're looking at 10. This allows for a little bit more leeway, and we would not subject as many people to some sort of prosecution that just doesn't make any sense in light of what we're trying to do today.

REPRESENTATIVE LOZANO: Your bill will increase it from 10 to 30?

NEVÁREZ: Exactly.

LOZANO: And would you vote for the bill if the amendment's attached?

NEVÁREZ: You know what, it's a bad bill all the way around, I'm not going to lie to you, Mr. Lozano. It's a bad bill all the way around. I'm just trying to make better of a bad situation. I'll go on record as saying it's actually a terrible bill, because it kills voters' rights. For me to sit here and be disingenuous, for me to say I would vote for a bill simply for this amendment, that I'm trying to make a little better out of a real bad situation, I would not vote for this bill.

LOZANO: Okay, thank you.

BURKETT: I'm going to move to table this amendment. We originally started out with two envelopes as our number to use, and I think when we discussed some with some of the opposition, we had it up to 20 at one point. We decided 10 was a good midway point, and I'd add, actually, that Representative Anchia is not here today, but he had a bill similar to this two sessions ago, he only allowed five. So I think that's a good number, and I think it's appropriate in this instance. So I move to table.

NEVÁREZ: My name's not Representative Anchia, but I will say this, irrespective of what may have happened in other sessions, I think at the end of the day, if this bill's going to pass this house—and that number's extremely arbitrary. Whether Representative Burkett likes two or one, again, when you limit the scope of the number of ballots to 10, you're creating situations where, I mean, again, we're going to be prosecuting people that are trying to help. And what I'm seeing today—and I'm a little disappointed in the body as a whole, and I include myself because I'm part of it—is we're not doing what we say we're supposed to do, which is protect the right to vote. And so, with that, I ask you to vote no on the motion to table.

[Amendment No. 9 was tabled by Record No. 330.]

BURKETT: Members, I appreciate all the conversation we had here today, and I hope you will see that my desire is to make sure that our elections are appropriate, they're legal, and that everybody's right to vote is protected. I think that's extremely important. I move that we pass this bill.

MARTINEZ FISCHER: Thank you for debating us on this bill today. As you know, it's not a very comfortable position for either of us, because it has significant implications; you as an advocate, those of us that advocate on behalf of the minority community, we're doing our jobs. It's not personal. That being

said, I know that there are some process questions that I'd like to have answered on this record. The first question I have for you is while you were writing this bill, debating this bill, contemplating your committee substitute, if you could tell me the names of the outside groups, if any, that you worked with in constructing this legislation.

BURKETT: We contacted the people that had come to the committee hearing and had some objections to it, trying to oversee those objections. We talked to the secretary of state's office, Department of Aging and Disabilities, Texas Democratic Party, the ACLU, Disability Rights, and then staff members from Eric Johnson's office and Gene Wu's office.

MARTINEZ FISCHER: And other than those you just mentioned, there weren't any outside groups, any other advocacy groups, third party groups that gave you ideas or influence on how you should shape this legislation?

BURKETT: No. We worked with the groups that were involved and the members who had an interest.

MARTINEZ FISCHER: And did you at any time have the occasion to work with the attorney general's office to have any statistical analysis of the current state of affairs with regard to mail ballots or mail ballot investigations or ongoing investigations with regard to the legislation that you're seeking to reform?

BURKETT: I'm not sure what your question is.

MARTINEZ FISCHER: I'll give you a good example. In redistricting, if you will, every time there was a map drawn, the attorney general's office actually was giving opinions of whether they thought that was legal or illegal, constitutional or otherwise, and we now know that, at least up until now, we know that the advice the attorney general gave members of the leadership turned out to be in error. So I want to know whether you relied on any information provided by the attorney general's office that assisted you in forming your opinions on this legislation.

BURKETT: We haven't talked to the AG's office about any pending legislation, and they were there to testify on the bill.

MARTINEZ FISCHER: So given that they're sort of charged with the authority to investigate and prosecute with their task force, you didn't get input from the attorney general as to what the attorney general thought might be the best way to curb mail ballot activity?

BURKETT: I'm still not sure I understand the question. We shaped this to the secretary of state, helping with the LBB to make sure that it was appropriate.

MARTINEZ FISCHER: And I think the secretary of state—they're in charge of elections, I can understand why they'd be involved—but in terms of who prosecutes these cases when somebody does something wrong, the person that may ultimately have the job to interpret this statute, it's very likely going to be the attorney general's office, and they have an entire task force devoted to that. So I would imagine that if we're going to get it right, that along the process of crafting this legislation, we would have sought the input and advice from the

attorney general or a legal division responsible for oversight of this particular area of the law, and are you telling me and this body that you didn't consult the attorney general?

BURKETT: No, the AG's office was available in the committee, and reviewed the draft that you have yourself, and answered all questions that were put in.

MARTINEZ FISCHER: So the AG gave you the thumbs-up that this was the way we're going to address voter fraud, and—

BURKETT: No, the AG did not give me the thumbs-up on that, they were there simply to answer questions that were put up before them by committee members.

MARTINEZ FISCHER: The AG never told you one way or the other that this could or could not run afoul of either voting rights or constitutional claims or anything of that sort?

BURKETT: We did not ask the AG for opinion, we simply worked through the secretary of state and went through the appropriate process to vet this bill in the committee process and had them available for questions to the committee members.

MARTINEZ FISCHER: So in perfecting the legislation, you never relied on expertise, whether it be from the attorney general, or expertise from third party groups, this was something that you just—

BURKETT: Expertise was relied on by our drafting attorneys.

MARTINEZ FISCHER: Lege Council, just the drafting lawyers?

BURKETT: Correct.

MARTINEZ FISCHER: They don't necessarily give you legal advice, they just sort of carry out the drafting instructions of your desire to create legislation.

BURKETT: Well, appropriate comments from the various groups that were there were given, and they drafted them as they do on any kind of legislation that we put forth.

MARTINEZ FISCHER: Okay, but other than them, again, the groups that do this day in and day out, the voting rights groups at MALDEF, the attorney general's voter task force, criminal district attorneys that would be prosecuting these cases, they never had the opportunity to give you their 10 cents on what might make this a good bill?

BURKETT: We took all information from any parties who contacted our office and wanted to put some input in.

MARTINEZ FISCHER: Well did they contact your office?

BURKETT: I do not know of those groups.

MARTINEZ FISCHER: Do you know if you personally worked with them in crafting this legislation?

BURKETT: As I mentioned before, our office worked with people that are involved with the secretary of state and our Lege Council.

MARTINEZ FISCHER: The only technical support you received in crafting this legislation was Legislative Council and the secretary of state's office? And anybody who called your office to work with you.

BURKETT: Could you define technical support for me, please?

MARTINEZ FISCHER: No one has told you this is the best way to curb mail ballot fraud in the State of Texas, is to do what we're doing with **HB 148**?

BURKETT: Basically, as we went through Lege Council, they drafted a bill that we felt was appropriate to address the issue, which I might add, everybody in this chamber who was here last session, this was aired more than once, that voter fraud is through mail ballots. I heard that more than once on this floor, through various members in this house, so that's what we're trying to address, an issue that effects both parties and all voters.

MARTINEZ FISCHER: There are a number of people who have said that, you're exactly right. In fact, there are a number of proposals on how you do that, and, in fact, we said that where the majority of the voter fraud existed, it wasn't with in-person voter impersonation, it was with mail ballots, poll-worker activity, and electioneering. Those are the three areas that have the highest percentages of fraud in the state.

BURKETT: I did not say that. What I'm trying to say is I'm trying to address an issue here that has been acknowledged overall by most members in this chamber. And this is the way that Lege Council gave us in a draft, and we asked them for a way to address some possible solutions. We talked to the various parties I mentioned earlier to take any input that we could and use what we could that we felt was appropriate and didn't adversely effect what we're trying to accomplish.

MARTINEZ FISCHER: And just so we're clear and fair, Lege Council doesn't give us advice, they give us the ability to draft legislation based on the instructions and parameters we give them when we do a request for a legislative proposal. And so, the experts, the technicians, the attorney general's office, the voter fraud task force, the district attorney's office that prosecutes these cases, elections administrators across the state, those are the folks that typically provide that kind of input and tell you how to have a meaningful piece of legislation, and it sounds like you didn't consult with them, and I just want to know why.

BURKETT: We vetted it through the committee process, which is appropriate, and it was posted publicly, which is also appropriate and is our process, and we're here now in this chamber addressing it in the next step of the process.

CANALES: By your own testimony and the testimony of those who have come forward in support of this bill, this is a serious problem, is what you're stating?

BURKETT: It's an acknowledged problem throughout most of the folks in this chamber. I heard it constantly, I might add, from many of your democrat cohorts.

CANALES: When voter fraud takes place, who's the beneficiary? Would that be a candidate?

BURKETT: I would assume so.

CANALES: And then the candidate would potentially be driving this. Would you be opposed to an amendment making it a state jail felony for the candidate caught in this? Because I've got it drafted.

BURKETT: If you'll read my bill, there is now a jail felony for whoever's paying these people, wherever that goes back to.

CANALES: Would you be opposed to making it a higher offense for the candidate? Maybe a second degree felony?

BURKETT: I think the bill is appropriate as it is written at this point.

REPRESENTATIVE PHILLIPS: What's your bill number?

BURKETT: 148.

PHILLIPS: That probably means that you filed this pretty early.

BURKETT: I filed it very early, yes, sir.

PHILLIPS: Do you remember how early you filed that?

BURKETT: I think on the first day of filing. We had a similar bill last session, so I was trying to give us plenty of time to work out any kinks that might be in the bill, from all parties involved.

PHILLIPS: And so you had that bill, and we've had several amendments offered today, is that correct?

BURKETT: Yes, sir, we have.

PHILLIPS: Did any of those folks that offered amendments—good luck with your bill.

BURKETT: Members, I move passage, thank you.

[CSHB 148 was passed to engrossment by Record No. 331.]

